



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 6702-99  
22 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Naval Reserve on 23 August 1943 for a period of two years or for the duration of the war plus six months. The record reflects that you served for only five months without incident. During the two month period from February to April 1944 you received a nonjudicial punishment (NJP) and were convicted by a deck court and a summary court-martial. Your offenses consisted of a 13-day period of unauthorized absence, theft, and using another man's military identification card in an attempt to leave your ship. Thereafter, you served without further incident and were advanced to seaman first class.

On or about 30 April 1945, the ship censored a letter to your brother in which you told him of a homosexual act between you and a ship's cook. In that letter, you stated that you knew if they caught you, they would "throw the book at you." On 6 June 1945, upon being confronted with a charge and specification alleging "scandalous conduct tending to the destruction of good morals," you elected to accept an undesirable discharge to escape trial by

general court-martial. Thereafter, the commanding officer recommended to the Chief of Naval Personnel that both you and the ship's cook be discharged as undesirable by reason of unfitness. On 25 July 1945, the Chief of Naval Personnel directed an undesirable discharge by reason of unfitness. You were so discharged on 30 August 1945.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, World War II service, letters of reference attesting to your good character, and the fact that it has been 55 years since you were discharged. The Board also noted your contentions to the effect that the letter you sent to your brother was a lie, you knew your mail would be censored, and that you lied in order to be discharged. The Board noted the aggravating factor that the homosexual acts occurred aboard ship. Even under current standards such acts could result in a discharge under other than honorable conditions. Whether the ship's cook admitted to the homosexual acts alleged in the letter to your brother could not be determined. However, the Board noted that he also was processed for an undesirable discharge. Additionally, the Board has no way of determining whether you are being truthful now, or were truthful in the letter to your brother admitting to participation in homosexual acts. If your current statement is true, and you lied in order to be discharged, you obtained your discharge by fraud. It is well established in law that an individual who perpetrates fraud in order to be discharged should not benefit from the fraud when it is later discovered. Accordingly, the Board concluded that the discharge was proper and no change is warranted, and your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director